

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re:

TENET CONCEPTS, LLC,

Debtor.

§
§ CASE NO. 18-40270-elm11
§
§
§
§
§ Chapter 11 Case

**OBJECTION TO PLAN OF REORGANIZATION AND DISCLOSURE STATEMENT
FILED BY WILLIE MUKES AND SIMILARLY SITUATED EMPLOYEES**

Willie J. Mukes (“Mukes”), for himself and for similarly situated Tenet Concepts, LLC employees, including, but not limited to, Barney Johnson, Derrick Abram, Donnie Trotter, Shamicha Cummings, Nakwisha Miller, Felicia Journet, Dominique Mays, and Leticia Spencer and Valarie Miller (collectively “Drivers”) files this Objection to confirmation of the Plan of Reorganization (the “Plan,” Dkt. 142) and final approval of the Disclosure Statement (the “Statement,” Dkt. 143). The Plan and Statement fail to fully pay Drivers’ claims and otherwise prejudice their rights. Accordingly, Drivers lodge the following objections to the Plan and Statement.

1. Drivers Object to Section 4.4 of the Plan

Section 4.4(a) of the Plan mistakenly claims that “Debtor has agreed to indemnify Amazon for the Claims asserted against Amazon in the Lines Lawsuit.” In fact, the indemnification agreement “does not apply to the extent that any claim subject to indemnification results from the negligence or willful misconduct of” Amazon. Section 4.4.(a) of the Plan is thus objectionable to the extent that it goes beyond Debtor’s indemnification obligations and purports to pay Amazon’s claim even for elements of the Lines Lawsuit that are not covered by the indemnification clause. By allowing this overbroad Amazon claim, the Plan prejudices Drivers and other creditors.

2. Drivers Object to Section 4.7(a) of the Plan

Section 4.7 of the Plan deals with claims based upon the claims asserted in the Mukes Lawsuit. Section 4.7(a) provides that “[n]o collective proof of claim shall be recognized as to any member of Class 7” and that “[e]ach Creditor asserting a class 7 Claim must file an appropriate proof of claim on or before the Bar Date.” The Mukes Lawsuit expressly seeks collective damages for any Driver that opts in according to the procedures set forth in the Fair Labor Standards Act. As explained in detail in Drivers’ response to Debtor’s Objection to Claim Number 13 (Dkt. 170), which Drivers incorporate fully herein, the notice of the bankruptcy and the opportunity to file a claim in bankruptcy is not an adequate substitute for a notice of a pending collective action under the FLSA and an opportunity to opt in. The Mukes Litigation was stayed prior to the notice being sent under the FLSA. Nonetheless, the nine drivers listed by name above filed their notices in the Mukes lawsuit and opted into it. This Court can approve an adequate FLSA notice to Drivers who potentially have collective claims in the Mukes Lawsuit. To disallow all collective claims through the Plan would be inequitable absent “timely, accurate, and informative” notice of the Drivers’ FLSA claims. *See Hoffmann-La Roche Inc. v. Sperling*, 493 U.S. 165, 172 (1989).

3. Drivers Object to Section 4.7(b) of the Plan

Drivers object to the seventy-nine (79) month installment payment term for Mukes Lawsuit Claims provided in Section 4.7(b) of the Plan. This payment term is unreasonably long and inequitable in light of Section 4.4(a) making Amazon’s claims payable in monthly installments “as may be agreed between the Debtor and Amazon.”

4. Drivers Object to the Statement’s Characterizations and Estimates of their Claims.

Drivers object to the Statement’s estimate of the Mukes Lawsuit Claims as belonging only to one driver (Willie Mukes) and being valued in the range of \$0-\$21,200. The amounts of the Mukes Lawsuit Claims against Debtor will ultimately be decided by the Court through the claims process. As described

in Drivers' responses to Debtor's objections to their proofs of claims (Dkt. 170), which Drivers incorporate fully herein, the Class 7 Mukes Lawsuit Claims include both Mukes' individual claims for \$21,200 and collective claims in amounts well in excess of \$21,200.

CONCLUSION

For the foregoing reasons, the Drivers respectfully request that the Court sustain the foregoing objections to the Plan and Statement and that the Court not approve any Plan of Reorganization that either (i) imposes liability on Debtor beyond the scope of its indemnification obligations to Amazon; or (ii) rejects Drivers' claims without adequate adversary process, FLSA Notice, and discovery.

Dated: December 14, 2018
Austin, Texas

Respectfully submitted,



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ATTORNEYS FOR WILLIE J. MUKES

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served via ECF upon any parties who have filed a notice of appearance on December 14, 2018. Additionally, a copy was served on the following individuals via electronic mail:

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